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|--------------------|----------------------|-------------------------------|--------------------------|
| APPLICATION NO. 41 | FILING DATE 09/15/95 | FIRST NAMED INVENTOR BUNGARDT | ATTORNEY DOCKET NO. 1779 |
|--------------------|----------------------|-------------------------------|--------------------------|

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| EXAMINER<br>DANG, K |
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| ART UNIT<br>2112 | PAPER NUMBER<br>15 |
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DATE MAILED:

03/31/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**08/420,241**

Applicant(s)  
**Bungardt et al.**

Examiner  
**Khanh Dang**

Group Art Unit  
**2112**



☒ Responsive to communication(s) filed on Jan 6, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 2-18 is/are pending in the application.

Of the above, claim(s) 7 and 8 is/are withdrawn from consideration.

☒ Claim(s) 2-6, 9, and 10 is/are allowed.

☒ Claim(s) 11-18 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Specification*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed. The term "ellipsoid" (claims 13 and 15) does not have adequate support from the originally filed specification.

### *Claim Rejections - 35 USC § 112*

2. Claims 13 and 15-18 are rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in the objection to the specification.
3. Claims 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, "the helix" (lins 8-9) lacks clear antecedent basis.

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In claim 13, the phrase "substantially ellipsoid in shape" is not ascertained at least in view of Figs. 1a and 1b.

In claim 14, "the auditory meatus" lacks clear antecedent basis.

In claim 15, line 2, the term "receiver" has not been positively recited in the claim. In line 3, "the lower concha" lacks clear antecedent basis. In line 5, the phrase "substantially ellipsoid" is not ascertained at least in view of Figs. 1a and 1b. In line 5, "the upper concha" lacks clear antecedent basis. In line 6, "the antihelix" and "the helix" lack clear antecedent basis. In line 7, the phrase "coupled between the first member and the second member" is unclear.

In claim 18, the language such as "in response ... the size and shape of of the third member" (lines 6-8) is not ascertained.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 15 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Kobayashi (5,142,587), Neal (3,041,856), Schier (1,953,437), Koch (1,893,143), Jones (1,668,910), or Langenbeck et al. (1,614,987).

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As best the examiner can ascertain from the language of the claim, claim 15 does not positively define any structure that differs from either one of the above cited references.

*Allowable Subject Matter*

5. Claims 2-6, 9, and 10 are allowable over the art of record.

*Conclusion*

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

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7. Any inquiry concerning this communication should be directed to K. Dang at telephone number (703) 308-0211.

*Khanh Dang*

**KHANH DANG  
PRIMARY EXAMINER  
GROUP 2100**